IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2931 of 2002

with

CIVIL APPLICATION No 3211 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION LTD.

Versus

B.J. SISHODIYA

Appearance:

1. Special Civil Application No. 2931 of 2002

MR UI VYAS for Petitioner No. 1

MR PS PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/04/2002

ORAL JUDGEMENT

#. Heard Mr.U.I.Vyas, learned advocate appearing on

behalf of the petitioner and Mr.P.S.Patel, learned advocate appearing for respondent. In the present petition, RULE has been issued by this Court and ad-interim relief in terms of Para-12[B] has been granted on 26th February, 2002. Today, when this matter is called out, with the consent of the learned advocates for the parties, this matter is heard finally.

#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Himmatnagar in Reference No.47/ 1997 dated 28th September, 2001, wherein the labour court has set aside the dismissal order and granted reinstatement with continuity of service without backwages of interim period with stoppage of three increments with permanent effect.

Before discussing the award in question on merits, this Court considers it fit to refer the observations made by the Apex Court in case of SHANKAR DASS V. UNION OF INDIA AND ANOTHER reported in AIR 1985 SC pg.772.

"Cases which evoke sympathy come frequently before the Court. But pity not often. The case before us has a unique story to tell the story of a crime committed under the stress of personal misery compounded by the apathy of the Establishment and the appalling delays of law. Ironically the silver lining is furnished by the bravery of a broken man who has been fighting against injustice for the last 23 years. When justice is done or so the Judges believe the conscience assuaged. But in this case, despite out doing all that can be done for the appellant within the frame work of law we have an uneasy conscience. Delay not only defeats justice and robs it of its immediate relevance to the parties but it shakes the very confidence of the people in the desire and ability of law courts to assist them when they need that assistance most."

#. Learned advocate Mr.Vyas appearing on behalf of the petitioner Corporation has submitted that the respondent conductor has committed serious misconduct of recovering the fare not issued the tickets. Therefore, chargesheet was served and after completion of departmental inquiry, the workman was dismissed from service. The labour court after appreciating the evidence on record, also come to the conclusion that departmental inquiry is legal and valid and finding recorded by the labour court is also held to be legal and valid. But the labour court has

exercised the powers under Section 11-A of the I.D.Act, 1947 and granted reinstatement to the respondent workman. Learned Advocate Mr.Vyas has also submitted that the labour court has committed gross error in exercising the powers under Section 11-A of the I.D.Act, 1947. Therefore, learned advocate Mr.Vyas submits that in such serious case, no reinstatement can be granted by the labour court which adversely affects the revenue of the Corporation. Mr.Vyas also submits that in past, the respondent workman has committed similar misconduct and such record has been produced by the Corporation before the labour court as well as before this Court and in past, at least, 54 defaults committed by the workman concerned and therefore, in such situation, reinstatement cannot be granted. Therefore, the labour court has committed gross error in exercising the powers under Section 11-A of the I.D.Act, 1947.

#. Learned advocate Mr.P.S.Patel for respondent workman has submitted that the labour court having discretionary powers under Section 11-A of the I.D. Act, 1947 and if ultimately labour court is satisfied that punishment of dismissal looking to the gravity of misconduct is harsh and unjustified and arbitrary, then labour court can pass appropriate orders on such conditions and therefore, the labour court has rightly passed the award granting reinstatement with continuity of service denying the entire backwages of the interim period by way of penalty and the labour court has also awarded punishment of stoppage of three increments with permanent effect. Therefore, the labour court has passed appropriate orders after considering the gravity of misconduct as well as defence of the respondent workman and therefore, no error has been committed by the labour court and the same does not call for any interference of this Court under Articles 226 and 227 of the Constitution of India.

#. I have considered submissions made by the learned advocates for the parties. The respondent workman was working as Conductor at Mansa Depot, Himmatnagar Division. The allegation made against the workman that on 24th October, 1994 when he was on route from Vijaynagar to Vadodara, his bus was checked by the checking staff and it was found that though fare was collected from four and half passengers of two difference groups and no tickets were issued and and short tickets were issued by the respondent workman. On the basis of the said allegation, after completion of the departmental inquiry, the respondent workman was dismissed from service on 29th November, 1995. Before the Labour Court, Reference was referred for adjudication. The statement

of claim was filed by the respondent workman vide Exh.6 and written statement was filed by the petitioner Corporation vide Exh.13. Thereafter, documentary evidence has been produced by the petitioner Corporation vide Exh.14 including default cards of the respondent workman. Then the respondent workman was examined vide Exh.16 and deposition of the workman was recorded before the labour court that he remained unemployed during the interim period. That ration card was also produced on record and legality and validity of the departmental inquiry was not challenged. Thereafter, the corporation has not led any oral evidence and ultimately both the parties have closed their oral evidence vide Exh.18. Thereafter the labour court has considered merits of the matter. The labour court has examined the issues; whether finding recording by the competent authority is legal and valid or not. Upon detailed examination by the labour court, ultimately, conclusion is arrived that the finding recorded by the competent authority is legal and valid and the misconduct is found to have proved against the respondent workman. Thereafter, the labour court has considered the question whether in view of the gravity of the misconduct, punishment of dismissal is just and proper. The labour court has considered the request made by the respondent workman that looking to the misconduct, punishment of dismissal is harsh and one more that the workman is prepared to forego the claim of backwages. All these aspects have been taken into account by the labour court and considering the gravity of misconduct and past record of 54 defaults, number of family members and the fact that there is no other earning member in the family of the respondent workman so that if the respondent workman is inflicted severe punishment of dismissal as inflicted by the authority, then the family will be adversely affected and therefore, the labour court has considered it fit to grant reinstatement while denying backwages of the interim period and also imposed punishment of stoppage of three increments with cumulative effect.

#. This Court has perused the entire award passed by the labour court. The labour court has given cogent and satisfactory reasons in support of its conclusion. The labour court has not committed any error in coming to the conclusion that misconduct is found to have proved. However, the labour court is having discretionary powers which requires to be exercised in case when the labour court considered it fit and satisfied that punishment of dismissal is harsh, unjustified and arbitrary. In the facts of the present case, the labour court has

considered family circumstances of the respondent workman and considering the fact that denial of backwages and some punishment will meet the ends of justice. Normally punishment should be based upon the socio economic background of the workman concerned, his family background and the compelling circumstances to commit misconduct, length of service and his past record. Thus, all these relevant factors require to be kept in mind by the competent authority at the time of imposing the punishment. These aspects has been taken into account by the labour court while granting reinstatement. However, looking to his past record of 54 defaults, may be some are of similar nature, according to my opinion, punishment which has been imposed by the labour court of stoppage of three increments with cumulative effect is not adequate and therefore, said punishment is required to be enhanced upto six increments with permanent effect, will justify the gravity of misconduct committed by the respondent workman. Therefore, award passed by the labour court in Reference No.47 / 1997 dated 28th September, 2001 is modified to the effect that instead of punishment of stoppage of three increments with cumulative effect, now the respondent workman has to suffer punishment of stoppage of six increments with cumulative effect. Except that modification, rest of the award passed by the labour court, Himmatnagar directing reinstatement with continuity of service without backwages of interim period remains intact and not disturbed by this Court. Accordingly, present petition is partly allowed. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted to the respondent.

So far as Civil Application No.3211 / 2002 is concerned, today, this Court has disposed of the main matter and modified the award in question and therefore, there is no need to pass any order in this Civil Application and the same stands disposed of accordingly.

Date : 26-4-2002 [H.K.Rathod, J.]

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